

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA \* Case No. 15-CR-24 (BMC)  
\*  
\* Brooklyn, New York  
\* April 15, 2015  
\*  
\*  
v. \*  
\*  
RUDY NEFTALI PINEDO CARIAS, \*  
\*  
Defendant. \*  
\*  
\* \* \* \* \*

TRANSCRIPT OF CRIMINAL CAUSE FOR PLEADING  
BEFORE THE HONORABLE JAMES ORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Government: HIRAL D. MEHTA, ESQ.  
Asst. United States Attorney  
United States Attorney's Office  
271 Cadman Plaza East  
Brooklyn, NY 11201

For the Defendant: LEN H. KAMDANG, ESQ.  
Federal Defenders of New York  
One Pierrepont Plaza  
16th Floor  
Brooklyn, NY 11201

Certified Interpreter: MS. MARISTELA VERASTEGUI

Proceedings recorded by electronic sound recording,  
transcript produced by transcription service.

1 (Proceedings commenced at 3:09 p.m.)

2 (Interpreter previously sworn, interprets proceedings as  
3 follows:)

4 THE CLERK: Criminal cause for pleading, U.S.A.

5 *versus Rudy Pinedo Carias*, Docket No. 15 Criminal 24.

6 Counsel, please state your appearances for the record  
7 starting with the government.

8 MR. MEHTA: Good morning, Your -- I'm sorry, good  
9 afternoon, Your Honor. Hiral Mehta, for the United States of  
10 America. I'm joined with Ms. Moore from our -- intern at the  
11 office.

12 THE COURT: Good afternoon to you both.

13 MR. KAMDANG: Good afternoon, Your Honor. Len  
14 Kamdang on behalf of Rudy Pinedo Carias, who is with me.  
15 Also seated at counsel table is Maristela Verastegui, who is  
16 a court certified interpreter previously sworn.

17 THE COURT: Good afternoon to all of you. Mr.  
18 Pinedo, with the assistance of the interpreter, are you able  
19 to understand me so far?

20 THE DEFENDANT: Yes, sir.

21 THE COURT: If you have any difficulty  
22 understanding me, let me know. Will you do that, please?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Okay. And, Mr. Kamdang, I understand  
25 your client wishes to enter a plea of guilty to Count 1 of

1 the indictment pursuant to an agreement with the government?

2 MR. KAMDANG: Yes, Your Honor.

3 THE COURT: All right. Mr. Pinedo, if you're going  
4 to plead guilty to a crime, there's some things I must  
5 explain to you and some questions I must ask. Your answers  
6 must be truthful, so I'm going to ask you to stand up for a  
7 moment so that you can be sworn in.

8 (The defendant is sworn.)

9 THE COURT: All right. Thank you, sir. Now --

10 THE DEFENDANT: Thank you.

11 THE COURT: Now that you're sworn to tell the  
12 truth, Mr. Pinedo, it's important that you tell the truth.  
13 If you were deliberately to lie in response to any of my  
14 questions, you can face additional criminal charges for  
15 perjury. Do you understand that?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: So it's very important that you  
18 understand my questions. If you need me to repeat or explain  
19 anything, just let me know. Will you do that, please?

20 THE DEFENDANT: Yes.

21 THE COURT: And if you need time to confer with  
22 your attorney, let me know that and I'll give you as much  
23 time as you like. Will you do that, please?

24 THE DEFENDANT: Yes, sir.

25 THE COURT: Okay. Now, I've got a couple of

1 documents that appear to have your signature on them.

2 There's a one page referral order and -- or a consent form --  
3 and a multiple page document entitled plea agreement. Could  
4 you take a look at both of them and let me know if that is  
5 your signature on those documents?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: Did you read each of those documents or  
8 have them translated for you and did you understand them  
9 before you signed both of them?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: All right. I'll go into each of those  
12 documents in a -- in a little more detail in a few moments.  
13 But first I want to make sure that you're competent to  
14 proceed today. So tell me, please, how old are you?

15 THE DEFENDANT: Forty-four years old, Your Honor.

16 THE COURT: How far did you go in school?

17 THE DEFENDANT: Intermediate.

18 THE COURT: How --

19 THE DEFENDANT: Well, it's what they call basic or  
20 intermediate. I reached the third grade.

21 THE COURT: Okay. How old were you when you left  
22 school?

23 THE DEFENDANT: When I left school?

24 THE COURT: About how old?

25 THE DEFENDANT: I was about 18 years old when I

1 stopped studying.

2 THE COURT: I see. Okay. Are you now, or have you  
3 recently been under the care of a doctor or a psychiatrist  
4 for any reason?

5 THE DEFENDANT: Was I seen by a them?

6 THE COURT: Yes. Well, are you -- are you  
7 receiving any kind of medical or psychiatric care?

8 THE DEFENDANT: No.

9 THE COURT: Okay. In the last 24 hours, have you  
10 had any pill, or drug, or medicine, or alcohol of any kind?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you ever been hospitalized or  
13 treated in any way for addiction or substance abuse problems?

14 THE DEFENDANT: No, sir.

15 THE COURT: Is your mind clear right now?

16 THE DEFENDANT: I'm kind of nervous, but yes.

17 THE COURT: Okay. I certainly understand being  
18 nervous. You know, I'm really just trying to figure out if  
19 you're having any difficulty understanding what's going on  
20 and understanding, you know, what I talk to you about. Any  
21 problems there?

22 THE DEFENDANT: No, sir.

23 THE COURT: All right. And, Mr. Kamdang, have you  
24 discussed the guilty plea with your client?

25 MR. KAMDANG: Yes, Your Honor.

1                   THE COURT: And in your view, does he understand  
2 the rights that he would waive by pleading guilty?

3                   MR. KAMDANG: Yes.

4                   THE COURT: Do you have any reason to question your  
5 client's competence to proceed today?

6                   MR. KAMDANG: No.

7                   THE COURT: All right. Now, Mr. Pinedo, what --  
8 let's talk first about this one page consent form that you  
9 signed. I want you -- I'm what's known as a magistrate  
10 judge. Your case is assigned to a higher ranking judge named  
11 Judge Cogan.

12                  The most important difference for today's purpose  
13 is that if you are convicted of a crime in this case, it's  
14 Judge Cogan, not me, who's going to decide what your sentence  
15 should be. Do you understand that?

16                  THE DEFENDANT: Yes, sir.

17                  THE COURT: So for that reason, you might prefer to  
18 have Judge Cogan listen to your plea in person, and you have  
19 the right to do it that way.

20                  If that's what you prefer, we'll find a time when  
21 Judge Cogan is available and there will be no harm that comes  
22 to you for making that decision. Do you understand that?

23                  THE DEFENDANT: Yes, sir.

24                  THE COURT: Okay. If you understand that you have  
25 that right and you're willing to waive it, I will listen to

1       your plea today. We're making a recording of everything  
2       that's being said here, and Judge Cogan will read a  
3       transcript of today's proceeding before he decides whether to  
4       accept your plea and before he decides what your sentence  
5       should be. Do you understand that?

6                   THE DEFENDANT: Yes, sir.

7                   THE COURT: And are you willing to waive your right  
8       to have Judge Cogan conduct today's proceeding and instead  
9       proceed before me?

10                  THE DEFENDANT: Yes. Yes, sir.

11                  THE COURT: Okay. Is that what you intended by  
12      signing this consent form?

13                  THE DEFENDANT: Yes, sir.

14                  THE COURT: All right. Then let's talk next about  
15      the charge in the case. I want to be sure you understand  
16      what the government would have to prove to convict you of the  
17      offense.

18                  The -- Count 1 of the indictment accuses you of a  
19      crime described as importation of heroin. To -- to prove you  
20      guilty of that offense, the government would have to prove  
21      several facts beyond a reasonable doubt.

22                  It would have to prove that you brought something  
23      into the United States from a place outside of the United  
24      States. They'd have to prove that the substance you brought  
25      in included heroin. They'd have to prove that you did this,

1       you brought this heroin into the United States knowingly and  
2       intentionally, and not as the result of some sort of accident  
3       or mistake.

4               They'd have to prove that you brought in this  
5       heroin within the Eastern District of New York, which is a  
6       geographical area that includes Kennedy Airport. And they'd  
7       have to prove that you did so on or near the date mentioned  
8       in the indictment, January 10th of this year.

9               Do you understand all that?

10              THE DEFENDANT: Yes, sir.

11              THE COURT: And, Mr. Mehta, have I omitted or  
12       misstated any of the essential elements of the offense?

13              MR. MEHTA: No, Your Honor.

14              THE COURT: All right. So, Mr. Pinedo, do you feel  
15       that you understand what the government would have to prove  
16       to convict you of this offense?

17              THE DEFENDANT: I'm sorry. I didn't understand  
18       that last part.

19              THE COURT: All right. I just went through the  
20       different facts that the government would have to prove  
21       before you could be found guilty of the offense charged in  
22       Count 1. I just want to make sure you feel that you  
23       understand what the government would have to prove to convict  
24       you of the offense. Do you feel that you do?

25              THE DEFENDANT: Yes, sir.

1                   THE COURT: Okay. Now, you have the right to plead  
2 not guilty and make the government prove all of those facts.  
3                   If you plead not guilty, under our constitution, you'll be  
4 entitled to a speedy and public trial by a jury with the  
5 assistance of counsel on that charge. Do you understand  
6 that?

7                   THE DEFENDANT: Yes.

8                   THE COURT: And since you can't afford private  
9 counsel, the Court has appointed Mr. Kamdang to represent you  
10 and he will continue to represent you at every stage of this  
11 case.

12                   If you want a trial, he'll represent you at the  
13 trial. If you're found guilty, he'll represent you at  
14 sentencing. If you want to challenge your conviction on  
15 appeal, he'll represent you for that. And if, for any  
16 reason, Mr. Kamdang is unavailable, the Court will appoint  
17 another lawyer to continue representing you, again, at no  
18 cost to you. Do you understand that?

19                   THE DEFENDANT: Yes, sir.

20                   THE COURT: Now, at a trial, you would be presumed  
21 innocent, and the government would have to overcome that  
22 presumption and prove your guilt beyond a reasonable doubt.  
23 You would not have to prove your innocence. If the  
24 government failed to prove your guilt beyond a reasonable  
25 doubt, the jury would have a duty to find you not guilty. Do

1 you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Also at the trial, the government would  
4 have to bring its witnesses to court, so that they could  
5 testify in your presence. Your attorney would have the right  
6 to cross-examine those witnesses. He could object to any  
7 evidence that the government tried to offer against you. He  
8 could offer evidence in your behalf if he thought that there  
9 was evidence that might assist you. And your lawyer could  
10 compel witnesses whom you wish to call to appear at the  
11 trial. Do you understand that?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Also at the trial, you would have the  
14 right to testify in your own behalf if you wish to do so, but  
15 you couldn't be forced to be a witness at your trial. And  
16 that's because under our constitution, no one can be forced  
17 to testify against himself.

18 So if you decided to go to trial, but decided not  
19 to testify, the judge would tell the jurors that they must  
20 not hold your silence against you when considering their  
21 verdict. Do you understand that?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Now, if you plead guilty and if based  
24 on my recommendation the Court accepts that plea, you'll be  
25 giving up your right to a trial and these other rights that

1       we've been discussing. There won't be a trial. You will  
2       simply be found guilty on the basis of your plea. And you  
3       won't ever be able to challenge that finding of guilt. Not  
4       in an appeal in this case. Not in some later legal  
5       proceeding. Not ever. The question of your guilt will be  
6       settled for all time. Do you understand that?

7                   THE DEFENDANT: Yes, sir.

8                   THE COURT: You should also understand that if you  
9       decide to plead guilty, I'm going to ask you some questions  
10      about what you did that makes you think you've committed this  
11      offense, because I need to be satisfied that there's a  
12      factual basis for your plea.

13                  If you decide to answer my questions and tell me  
14      that you've committed this crime, you'll be giving up your  
15      right not to be a witness against yourself. Do you  
16      understand that?

17                  THE DEFENDANT: Yes, sir.

18                  THE COURT: Are you willing to give up your right  
19      to a trial and the other rights that I've been telling you  
20      about?

21                  THE DEFENDANT: I'm sorry. I didn't understand  
22      that question.

23                  THE COURT: I'll try again. I've just got through  
24      explaining the rights that you would have to a trial and the  
25      various rights that you would have at a trial. My question

1       is whether you are willing to give up your right to a trial  
2       and all of these other rights that come with a trial.

3                 THE DEFENDANT: Yes, sir.

4                 THE COURT: Okay. Now, let's turn next to the plea  
5       agreement. It's been marked as Exhibit 1. I have the  
6       original document that you signed up here with me. Do you  
7       have a copy of the document at the table there?

8                 THE DEFENDANT: Yes, sir.

9                 THE COURT: Okay. If, for any reason, you'd like  
10      to look at the original document that you signed, just let me  
11      know. I'll bring it down to you. Okay.

12                 THE DEFENDANT: Yes, sir.

13                 THE COURT: Okay. Now, is this document that you  
14      signed -- is it, in fact, your agreement with the government?

15                 THE DEFENDANT: Yes, sir.

16                 THE COURT: I'm not going to go through it page by  
17      page or paragraph by paragraph, because I don't want to give  
18      you the wrong idea that there's any one part of this document  
19      that's more important or less important than any other part.  
20      As far as I can tell from looking at the document, it's the  
21      whole thing that is your agreement with the government. Is  
22      that your understanding as well?

23                 THE DEFENDANT: Yes, sir.

24                 THE COURT: Do you think the government has made  
25      you any promise that is not written down in this document?

1                   THE DEFENDANT: No, sir.

2                   THE COURT: Okay. Mr. Kamdang, is that your  
3                   understanding as well?

4                   MR. KAMDANG: Yes, Your Honor.

5                   THE COURT: And, Mr. Mehta, is it your  
6                   understanding?

7                   MR. MEHTA: Yes, Your Honor.

8                   THE COURT: All right. Mr. Pinedo, let's talk next  
9                   about what could happen at the sentencing. If you're  
10                   convicted of the crime charged in Count 1, the Court can  
11                   sentence you to spend up to 20 years in prison. Do you  
12                   understand that?

13                   THE DEFENDANT: Yes, sir.

14                   THE COURT: There's no minimum prison term.  
15                   However, if you are sentenced to prison, the Court can also  
16                   sentence you to a term of supervised release of at least  
17                   three years and possibly as long as the rest of your life.

18                   Now, what that means is upon your release from  
19                   prison, you would be supervised and you'd have to obey  
20                   certain conditions. And if, during that period of  
21                   supervision from three years up to the rest of your life, if  
22                   during that time you were to violate any of the conditions of  
23                   your release, you could be sentenced to spend up to two more  
24                   years in prison without credit for the time that you had  
25                   already been in prison and without credit for the time that

1 you had already been supervised. Do you understand that?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: In addition to prison and supervised  
4 release, the Court could sentence you to pay a monetary fine  
5 of up to \$1 million. Do you understand that?

6 THE DEFENDANT: Yes, sir.

7 THE COURT: On top of everything else that I've  
8 already told you about, the Court must order you, as part of  
9 the sentence, to pay what's called a special assessment in  
10 the amount of \$100. Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Okay. And in addition to everything  
13 else I've already told you about, you should assume that if  
14 you're convicted of the offense charged in Count 1, at some  
15 point in the future, possibly after you've served prison  
16 time, you will be removed from the United States. Do you  
17 understand that?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Okay. Now, do you feel that you  
20 understand what could happen in sentencing?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: And, Mr. Mehta, have I omitted or  
23 misstated any of the sentencing possibilities?

24 MR. MEHTA: No, Your Honor.

25 THE COURT: All right. So let's talk next, Mr.

1 Pinedo, about how the judge will go about choosing a  
2 sentence. And the first thing we should talk about in that  
3 regard is the federal sentencing guidelines. Have you  
4 discussed those with your attorney?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Okay. If you're not sure, you know,  
7 about what I'm asking, just ask me for clarification. Okay.  
8 I see in the plea agreement that the prosecutor's office has  
9 provided its estimate of how the guidelines will be  
10 calculated in this case.

11 And I want to be sure that you understand that  
12 while the government, I'm sure, tried to be accurate, the  
13 estimate that they've provided may be wrong, anything you've  
14 gotten from your lawyer on that may be wrong.

15 And that's because the only calculation of the  
16 guidelines that's going to count in this case is the one that  
17 Judge Cogan will do at the time of your sentencing. Do you  
18 understand that?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Now, the way these guidelines work is  
21 they help the judge consider sentencing by coming up with two  
22 scores. The first score measures the seriousness of the  
23 offense. So in a drug case, for example, like this, the  
24 amount of drugs involved would affect the score. Do you  
25 understand that?

1                   THE DEFENDANT: Yes, sir.

2                   THE COURT: The second score is based on your  
3 personal history. So if you've previously been convicted of  
4 an offense, that would affect that second score. Do you  
5 understand that?

6                   THE DEFENDANT: Yes, sir.

7                   THE COURT: With those two numbers, the judge can  
8 look up in a table, the box that corresponds to those two  
9 scores, and written down inside that box is a range of  
10 months. And that's the recommended sentencing guideline  
11 range for the case. Do you understand how it works?

12                  THE DEFENDANT: Yes, sir.

13                  THE COURT: Now, the judge must consider imposing a  
14 sentence within that recommended range, but he could also  
15 impose a sentence that's more severe or more lenient.

16                  And in making that decision, the judge will have to  
17 take into account your background and the circumstances of  
18 the offense. He'll need to consider respect for the law and  
19 the need to impose a just punishment on you. He'll need to  
20 consider how best to deter you and others from committing  
21 crimes in the future. And he'll have to consider any need  
22 that you may have for effective correctional treatment.

23                  And he'll take all of those things into account and  
24 impose a sentence that he believes to be fair under all of  
25 those circumstances. Do you understand that?

1                   THE DEFENDANT: Yes, sir.

2                   THE COURT: To help the judge make that decision,  
3                   the Probation Department will write a report. And as they  
4                   prepare to do so, they'll interview you and you can have your  
5                   attorney present for that interview. They'll probably talk  
6                   to the government as well. They may talk to others. And  
7                   they'll write a report that has information about your  
8                   background and about what happened in this case.

9                   It will have a discussion of the law that applies  
10                  and it will have a calculation of the sentencing guidelines.  
11                  And you'll get a chance to read that report and review it  
12                  with your attorney. Do you understand that?

13                  THE DEFENDANT: Yes, sir.

14                  THE COURT: Now, you may not like what you see in  
15                  the report. You may think it's inaccurate or unfair in some  
16                  way. You may think it's got the guidelines wrong. None of  
17                  that will be a reason to take back your guilty plea. Do you  
18                  understand that?

19                  THE DEFENDANT: Yes, sir.

20                  THE COURT: Now, what you can do, if you think  
21                  there's a problem with the Probation Department report, is  
22                  object to it. Your help -- your lawyer will help you file  
23                  those objections. The judge will hear arguments from both  
24                  sides about the objections and he'll rule on them. And then  
25                  he'll listen to what you and your attorney and the prosecutor

1 and possibly others have to say about what the sentence  
2 should be. And then he'll calculate the sentencing  
3 guidelines that apply. And then he'll impose a sentence on  
4 you. Do you understand that -- that process?

5 THE DEFENDANT: Yes, sir.

6 THE COURT: Now, at any step along the way in that  
7 process, you may think that the judge makes a mistake. Maybe  
8 he acts unfairly or gets a fact or the guidelines wrong.  
9 None of that will be a reason to take back your guilty plea.  
10 Do you understand that?

11 THE DEFENDANT: Yes, sir.

12 THE COURT: Now, normally if the judge were to make  
13 a mistake of some sort in sentencing you, you would have the  
14 right to challenge the sentence on appeal. You couldn't  
15 challenge the finding of guilt on appeal, because you're  
16 pleading guilty. But you could normally appeal an unlawful  
17 sentence. Do you understand that?

18 THE DEFENDANT: Yes, I do.

19 THE COURT: However, I see in your plea agreement  
20 and it's on page three in paragraph four, if you want to look  
21 for yourself. It says that as long as the Court imposes a  
22 prison term of 63 months or less, you will not challenge the  
23 sentence.

24 What that means, I think, is that even if you think  
25 the judge acts unlawfully in sentencing you, as long as the

1           result is 63 months or less in prison, you will give up your  
2           right to challenge that sentence.

3                   So my question is whether it's your intention to  
4           give up that part of your right to appeal an unlawful  
5           sentence. Is that your intention?

6                   THE DEFENDANT: I'm sorry. Is that -- well, yes,  
7           sir.

8                   THE COURT: Okay. Do you have some -- if you're  
9           not -- not certain about what I'm asking, I'll be happy to  
10           explain it. Do you want -- do you want me to explain it a  
11           little more?

12                   MR. KAMDANG: One moment, Your Honor.

13                   (Pause.)

14                   MR. KAMDANG: We're ready to proceed.

15                   THE COURT: Okay. So do you -- do you need me to  
16           explain that last question again?

17                   THE DEFENDANT: No, sir.

18                   THE COURT: All right. Do you have any questions  
19           that you'd like to ask me about the charge in this case,  
20           about your rights, about the sentencing possibilities, or  
21           anything at all?

22                   THE COURT: No, sir.

23                   THE COURT: I'm going to give you one more  
24           opportunity to answer that question. The reason I do that is  
25           people sometimes change their mind about pleading guilty.

1       And I just want to be sure that you understand that if you  
2       come back later and ask to withdraw your plea, the prosecutor  
3       is probably going to argue that you shouldn't be allowed to  
4       do so, because today you said you understood what you were  
5       doing. And he'll probably win that argument.

6                   So if there's anything that you need to ask about  
7       or think about before making the decision to plead guilty,  
8       now is the time to do it, because later it may be too late.  
9       Do you understand that?

10                  THE DEFENDANT: Yes, sir.

11                  THE COURT: Is there anything at all that you'd  
12       like to ask me?

13                  THE DEFENDANT: No, sir.

14                  THE COURT: Do you need more time to think about  
15       your decision or to discuss it with your attorney?

16                  THE DEFENDANT: Well, no. No, sir.

17                  THE COURT: Okay. Mr. Kamdang, is there any legal  
18       reason why your client should not plead guilty?

19                  MR. KAMDANG: No, Your Honor.

20                  THE COURT: Mr. Pinedo, are you satisfied with the  
21       legal representation you've received up until now?

22                  THE DEFENDANT: Yes, sir.

23                  THE COURT: Then tell me, please, how do you plead  
24       to the charge contained in Count 1 of the indictment accusing  
25       you of importation of heroin; guilty or not guilty.

1                   THE DEFENDANT: Guilty, Your Honor.

2                   THE COURT: Are you making this plea of guilty  
3                   voluntarily and of your own free will?

4                   THE DEFENDANT: Yes. I do it voluntarily. Yes.

5                   THE COURT: Has anyone threatened or forced you to  
6                   plead guilty?

7                   THE DEFENDANT: No, sir.

8                   THE COURT: Aside from the promises that are  
9                   written down in your plea agreement -- the -- the document  
10                  you signed -- has anyone made any promise that is causing you  
11                  to plead guilty?

12                  THE DEFENDANT: No, sir.

13                  THE COURT: Has anyone made any promise that --  
14                  about what your sentence will be?

15                  THE DEFENDANT: No, sir.

16                  THE COURT: Then tell me, please, in your own words  
17                  what you did that makes you think you've committed this  
18                  offense.

19                  THE DEFENDANT: On January 10th of 2015, I was sent  
20                  from Guatemala to New York. Like, some people that forced me  
21                  to bring a substance in my suitcase. It -- it was illegal  
22                  drugs. I didn't know exactly which kind of drugs. And I was  
23                  detained at Kennedy Airport at 2:00 a.m.

24                  THE COURT: When you say you were forced to do  
25                  it -- you know, if you were acting out of coercion, you

1 haven't committed an offense. Did you feel that you had the  
2 ability to say no to these people who told you to bring drugs  
3 to the United States?

4 MR. KAMDANG: The Court's indulgence.

5 THE COURT: Yes.

6 (Pause.)

7 THE DEFENDANT: They -- they were going to pay me  
8 money --

9 THE COURT: Okay.

10 THE DEFENDANT: -- to do this. To -- to bring this  
11 substance into -- in here.

12 THE COURT: Okay. Did -- did you feel that you had  
13 the ability to say no?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. Mr. Mehta, is there  
16 anything further that you'd like to proffer or have elicit?

17 MR. MEHTA: No, Your Honor.

18 THE COURT: Do you agree with me that the -- well,  
19 let me ask you one question. I take it the government would  
20 be prepared to prove at trial, if required to do so, that the  
21 substance that Mr. Pinedo brought into the United States was,  
22 in fact, a controlled substance?

23 MR. MEHTA: Yes, Your Honor. We have a laboratory  
24 report we disclosed to Defense counsel showing that the  
25 substance was heroin.

1                   THE COURT: Okay. Mr. Pinedo, I know you say that  
2 you didn't know what drugs that you had, but just to clarify.  
3 You believed that what you had was drugs, correct?

4                   THE DEFENDANT: Yes, sir.

5                   THE COURT: Okay. And the government says that  
6 they can prove that what you had was, in fact, heroin. Do  
7 you have any reason to doubt that they could prove that  
8 beyond a reasonable doubt?

9                   THE DEFENDANT: No, sir.

10                  THE COURT: Okay. And, Mr. Mehta, do you agree  
11 that the defendant's allocution satisfies all of the  
12 essential elements of the -- of the offense in Count 1?

13                  MR. MEHTA: Yes, Your Honor. And I wish to put on  
14 the record that John F. Kennedy Airport is the Eastern  
15 District of New York.

16                  THE COURT: Of course, yes. And is there anything  
17 further that you think I should discuss with Mr. Pinedo for  
18 purposes of Rule 11?

19                  MR. MEHTA: No, Your Honor.

20                  THE COURT: Mr. Kamdang, is there anything further  
21 you think I should discuss with your client under Rule 11?

22                  MR. KAMDANG: No, Your Honor.

23                  THE COURT: All right. Well, based on what I've  
24 heard today, I find that Mr. Pinedo is competent to  
25 proceed --

1 MR. KAMDANG: One moment, Your Honor.

2 THE COURT: Yes. Go ahead.

3 (Pause.)

4 MR. KAMDANG: Mr. Pinedo -- Pinedo Carias would  
5 just like to put his remorse on the record.

6 THE COURT: Go ahead, sir.

7 THE DEFENDANT: I'm just very sorry I did this.

8 THE COURT: All right. Thank you for saying that.  
9 I know it's a difficult decision and it's a difficult point  
10 in your life, and I'm sure it was important to you to say  
11 that. Is there anything else you would like me to hear?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. Okay. Well, as I was  
14 saying, based on the information I've heard, I find that Mr.  
15 Pinedo is competent to proceed.

16 I find that he's acting voluntarily, that his plea  
17 did not result from any force, threats, or undisclosed  
18 promises. I find that he fully understands his rights, the  
19 potential consequences of his plea, and that there's a  
20 factual basis for his plea of guilty. I, therefore,  
21 respectfully recommend that the Court accept Mr. Pinedo's  
22 plea of guilty to Count 1 of the indictment.

23 I'll ask all of you to convene before Judge Cogan  
24 for a sentencing proceeding on July 17th at 10:00 a.m. I'm  
25 going to return to the government for safekeeping Court

1                   Exhibit 1, the original plea agreement.

2                   Is there anything further for today, folks?

3                   MR. MEHTA: No, Your Honor.

4                   MR. KAMDANG: No, Your Honor.

5                   THE COURT: Okay. Thank you all. Have a very good  
6 day.

7                   MR. KAMDANG: Thank you.

8                   (Proceedings concluded at 3:37 p.m.)

9

10                  I, CHRISTINE FIORE, court-approved transcriber and  
11 certified electronic reporter and transcriber, certify that  
12 the foregoing is a correct transcript from the official  
13 electronic sound recording of the proceedings in the above-  
14 entitled matter.

15

*Christine Fiore*

16

May 20, 2015

17

Christine Fiore, CERT

18

Transcriber

19

20

21

22

23

24